

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Revocation of the Escrow Agent  
3 License of:

4 **SUMMIT TITLE AGENCY, INC. AND NANCY**  
5 **D'ANNA, PRESIDENT**  
6 2500 South Power Road, Suite 115A  
Mesa, AZ 85209

Respondents.

**No. 10F-BD0006-BNK**

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER OF  
REVOCATION**

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the  
8 record in this matter, including the Administrative Law Judge Decision attached and incorporated  
9 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of  
10 Law and recommended decision as follows:

11 **ORDER**

12 **IT IS ORDERED** that Respondents' Escrow Agent License Number EA 0908727 is  
13 revoked effective as of the date of this Order.

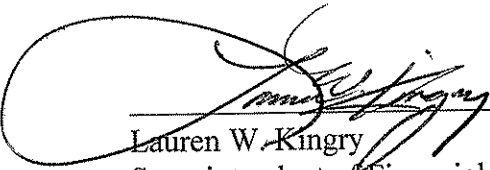
14 **IT IS FURTHERED ORDERED** that Respondents shall pay a civil money penalty in the  
15 amount of \$10,000.00 within forty-five (45) days of the effective date of this Order.

16 **IT IS FURTHER ORDERED** that Respondents shall pay the examination fee of  
17 \$6,337.50 and a penalty of \$3,700.00 for failing to pay the examination fee for the period of  
18 November 9, 2009 through January 22, 2010 within forty-five (45) day of the effective date of this  
19 Order.

20 **NOTICE**

21 The parties are advised that this Order becomes effective immediately and the provisions of  
22 this Order shall remain effective and enforceable except to the extent that, and until such time as,  
23 any provision of this Order shall have been modified, terminated, suspended, or set aside by the  
24 Superintendent or a court of competent jurisdiction.

25 DATED this 26th day of May, 2010.

26   
27 Lauren W. Kingry  
28 Superintendent of Financial Institutions

1 ORIGINAL filed this 26<sup>th</sup> day of May, 2010 in the office of:

2 Lauren W. Kingry, Superintendent of Financial Institutions  
3 Arizona Department of Financial Institutions  
4 ATTN: June Beckwith  
5 2910 North 44th Street, Suite 310  
6 Phoenix, Arizona 85018

7 COPY mailed same date to:

8 Lewis Kowal, Administrative Law Judge  
9 Office of the Administrative Hearings  
10 1400 West Washington, Suite 101  
11 Phoenix, AZ 85007

12 Erin Gallagher, Assistant Attorney General  
13 Office of the Attorney General  
14 1275 West Washington  
15 Phoenix, AZ 85007

16 Robert D. Charlton, Assistant Superintendent  
17 Peggy Prill, Senior Examiner  
18 Arizona Department of Financial Institutions  
19 2910 N. 44th Street, Suite 310  
20 Phoenix, AZ 85018

21 AND COPY MAILED SAME DATE by  
22 Certified Mail, Return Receipt Requested, to:

23 Nancy D'Anna  
24 President  
25 Summit Title Agency, Inc.  
26 225 E. Germann Road, Suite 260  
27 Gilbert, AZ 85297

28 By: June Beckwith

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Revocation of the  
Escrow Agent

License of:

SUMMIT TITLE AGENCY, INC. AND  
NANCY D'ANNA, PRESIDENT  
2500 South Power Road, Suite 115A  
Mesa, AZ 85209

Respondents.

No. 10F-BD006-BNK

ADMINISTRATIVE  
LAW JUDGE DECISION

**HEARING:** January 22, 2010 and February 22, 2010. Record closed on May 4, 2010.

**APPEARANCES:** Assistant Attorney General Erin Gallagher on behalf of the Arizona Department of Financial Institutions; Nancy D'Anna on her own behalf and on behalf of Summit Title Agency, Inc.

**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

**FINDINGS OF FACT**

1. At all times relevant to this matter, Summit Title Agency, Inc. ("Summit") was and is an Arizona Corporation authorized to transact business in Arizona as an escrow agent and holds License Number EA-0908727 ("License") that was issued by the Arizona Department of Financial Institutions ("Department").
2. At all times relevant to this matter, Nancy D'Anna ("Ms. D'Anna") was and is the president of Summit and was the person in charge of and responsible for Summit's

1 escrow agent business in the State of Arizona (Ms. D'Anna and Summit are collectively  
2 referred to herein as "Respondents").

3 3. On December 9, 2008, the Department conducted an examination of Summit  
4 which revealed certain deficiencies and violations of law.

5 The Department's Evidence

6 Jon Bartlett

7 4. Jon Bartlett ("Mr. Bartlett") is an Agency Manager with First American Title  
8 Insurance Company ("First American") and has been in that position since 1997. Mr.  
9 Bartlett has been with First American for approximately nineteen to twenty years, with  
10 two short absences since 1988. Mr. Bartlett testified that there was a contract  
11 between Summit and First American called an Agency Agreement, which outlines the  
12 companies' relationship.

13 5. Pursuant to the Agency Agreement, First American underwrote Summit's title  
14 policies and provided other services and products in exchange for payment.

15 6. Mr. Bartlett testified that Summit owed an outstanding balance of approximately  
16 \$13,000.00 to First American in March 2008 pursuant to the Agency Agreement that  
17 commenced in November 2006.

18 7. Mr. Bartlett arranged with Ms. D'Anna a payment plan for the outstanding  
19 balance, whereby First American allowed Summit six months during which the past  
20 due balance did not have to be paid, as long as Summit kept the balance at  
21 \$13,000.00. A payment made in August 2008 brought the balance close to  
22 \$13,000.00. Almost immediately Summit's debt rose above \$13,000.00 and at the end  
23 of the six month period, Summit owed approximately \$24,000.00 to First American.  
24 Mr. Bartlett testified that Summit made many representations that the debt would be  
25 paid; however, despite being given a number of opportunities, Summit failed to do so.

26 8. First American's Agency Agreement with Summit was canceled due to Summit's  
27 non-payment of funds that were due and owed. On December 16, 2008, Mr. Bartlett  
28 informed Ms. D'Anna that Summit would be required to pay its balance down to  
29 \$13,263.40 by the end of that month in order to continue using First American  
30 products and services pending the conclusion of the cancellation process. State's

1 *Exhibit 2.* According to Mr. Bartlett, other than one payment totaling approximately  
2 \$7,000.00 in August of 2008, Summit made a few further "insignificant" payments.

3 9. On March 10, 2009, First American advised the Department that Summit owed  
4 First American an outstanding balance of \$29,659.40. *State's Exhibit 2.* Mr. Bartlett  
5 testified that First American no longer provides underwriting services to Summit and  
6 would not do so in the future.

7 Seth Fink

8 10. Seth Fink ("Mr. Fink") is a self-employed Certified Public Accountant ("CPA").  
9 Mr. Fink is also Summit's statutory agent of record and CPA. Mr. Fink testified that his  
10 services to Summit included monthly accounting procedures, payroll preparation,  
11 payroll quarterly preparation, and income tax preparation, among other things. As  
12 statutory agent, Mr. Fink testified that it was his responsibility to accept on behalf of  
13 Summit service of process and other documents.

14 11. Mr. Fink was served with the Complaint in *Bank of America, N.A. v. Summit Title*  
15 *Agency, Inc.*, Maricopa County Superior Court Case Number CV2009-000506 in early  
16 2009, and informed Ms. D'Anna of the lawsuit via e-mail. *State's Exhibit 6.* He further  
17 testified that Ms. D'Anna's response upon receipt of that information was that she was  
18 unable to satisfy the obligation to Bank of America. Mr. Fink also informed Ms. D'Anna  
19 of the court's Judgment for Bank of America after he received it in early March of 2009.

20 12. Mr. Fink testified that Bank of America's Complaint was filed based on Summit's  
21 overdraft of an account held at Bank of America, and that a judgment of \$11,070.58  
22 plus costs and attorneys fees was awarded to Bank of America. *State's Exhibit 6.* In  
23 the Judgment, Summit was ordered to pay Bank of America \$11,070.58, as well as  
24 attorneys' fees of \$900.00 and costs of \$361.00. *State's Exhibit 6.*

25 13. On January 16, 2009, Mr. Fink e-mailed Peggy Prill ("Ms. Prill") a Department  
26 examiner, to inform her that his accounting firm would not be performing any further  
27 services for Summit until Summit's account with him was brought current. *State's*  
28 *Exhibit 3.* Mr. Fink testified that his January 16, 2009 e-mail was in response to an  
29 inquiry made by Ms. Prill regarding the status of Summit's year-end September 2008  
30 financial report required by the Department.

1 14. Mr. Fink's company's billing statement dated March 5, 2009 showed Summit  
2 owed him a total of \$3,296.81. As payment, Ms. D'Anna provided Mr. Fink with two  
3 separate checks in the early part of March 2009, each for half of the outstanding  
4 balance. *See State's Exhibit 3.* Ms. D'Anna informed Mr. Fink that the checks could  
5 not be deposited upon receipt and that she would advise when funds were available  
6 for the checks. Near the end of March 2009, Ms. D'Anna notified Mr. Fink that one  
7 check could be deposited and he was able to collect half of the balance that was due  
8 as of March 5, 2009. Mr. Fink testified that he contacted both Ms. D'Anna and the  
9 bank on a number of occasions to determine whether Summit had sufficient funds in its  
10 account for the second check to be negotiated. After six months had elapsed, the  
11 bank would no longer honor the instrument and Mr. Fink was not able to negotiate the  
12 second check.

13 15. At the time the administrative hearing commenced, Mr. Fink testified that  
14 Summit still owed his company over \$2,300.00.

15 16. Mr. Fink testified that he discussed with Ms. D'Anna the Department's deadline  
16 for filing Summit's audited financial report for the fiscal year-ending September 2008,  
17 and that he would not perform work with respect to that report until Summit's account  
18 with him was paid in full.

19 Lesha Freid

20 17. Lesha Freid ("Ms. Freid") was an owner and officer of Summit at the time the  
21 company was formed. Ms. Freid testified that she was removed as an officer of  
22 Summit on November 7, 2007, and later replaced as an owner on February 29, 2008.

23 18. Ms. Freid testified that she learned of Summit's business credit card debt owed  
24 to Bank of America when Summit failed to make the monthly payment due in January  
25 2008. Because the balance exceeded the card's credit limit, Bank of America  
26 contacted Ms. Freid, who was listed as the guarantor for the card.

27 19. Ms. Freid put a hold on the credit card and contacted Ms. D'Anna upon learning  
28 of the past due debt, whereupon Ms. D'Anna advised her that Summit would take care  
29 of the debt.  
30

1 20. Ms. Freid requested the credit card billing statements be mailed to her own  
2 address instead of Summit's and she would then inform Ms. D'Anna of the payment  
3 information. In February 2008, Bank of America contacted Ms. Freid again regarding  
4 another missed credit card payment by Summit.

5 21. Ms. Freid testified that, at that point, she insisted Ms. D'Anna replace her with  
6 another owner and remove her as the guarantor for the business credit card. Ms.  
7 D'Anna drew up a buy-out agreement and a company divestment agreement.  
8 According to Ms. Freid, the buy-out agreement provided that Summit would continue to  
9 make timely payments on the business credit card account and would also find a new  
10 personal guarantor for the account within thirty days. The agreement also provided  
11 that Summit would contact her in the event another personal guarantor could not be  
12 obtained within those thirty days.

13 22. Another guarantor was found and that guarantor and Ms. Freid filled out the  
14 necessary paperwork for Bank of America to make the substitution of guarantor for  
15 Summit's business credit card account. On April 8, 2008, Ms. Freid participated in a  
16 conference call with the new guarantor and Bank of America. Ms. Freid was informed  
17 that the change had been made and that she was no longer the personal guarantor for  
18 Summit's business credit card account. Ms. Freid testified that, pursuant to that  
19 conference call and Bank of America's representation, she believed she was no longer  
20 the personal guarantor for Summit's business credit card. At that point, the monthly  
21 billing statements were re-directed to Summit's business address.

22 23. In August 2008, Ms. Freid's husband's business financial account was debited  
23 approximately \$800.00 and the joint account shared by Ms. Freid and her husband  
24 was debited approximately \$2,800.00. Ms. Freid contacted Bank of America and  
25 learned that the debits were for past due amounts on Summit's business credit card  
26 and that she was still the personal guarantor for the account. Ms. Freid also learned  
27 from Bank of America that the new guarantor had not been approved. She testified  
28 that she was never informed that she was still the guarantor on the account. At that  
29 time, Ms. Freid changed the billing address for the credit card back to her home  
30 address and negotiated the outstanding balance of \$18,168.83 into a 60 month term

1 loan at one percent interest. Ms. Freid testified that she then informed Ms. D'Anna of  
2 the business credit card's status.

3 24. Ms. Freid and her husband entered into an Agreement of Compromise and  
4 Settlement and Release with both Summit and Ms. D'Anna wherein Summit and Ms.  
5 D'Anna agreed to refund the monies debited from Ms. Freid's and her husband's bank  
6 accounts, as well as pay the remaining balance of the credit card debt. See *State's*  
7 *Exhibit 7*. Ms. Freid testified that she forwarded the monthly billing statements to Ms.  
8 D'Anna each month at least a week prior to when the payments were due. Ms. Freid  
9 further testified that Summit failed to make all of the monthly payments as they became  
10 due; although she conceded some payments were made. Ms. Freid made the  
11 remaining monthly payments, and Summit reimbursed some of those monies in May of  
12 2009. *Respondents' Exhibit J*.

13 25. Ms. Freid testified that neither Summit nor Ms. D'Anna made any payments to  
14 the Freids toward the reimbursement of the amounts debited from their personal bank  
15 accounts.

16 Peggy Prill

17 Background

18 26. Ms. Prill has been employed by the Department for approximately four and a  
19 half years. She is currently performing accounting functions and administrative duties.  
20 However, prior to September 2009, Ms. Prill was a Senior Financial examiner who  
21 examined escrow agents. Prior to her employment with the Department, Ms. Prill was  
22 employed by Wells Fargo Bank as an operations manager for approximately fifteen  
23 years. Ms. Prill has received training classes and seminars during her employment  
24 with the Department, and performed reconciliations during her tenure with Wells  
25 Fargo.

26 The Department's Examination of Summit

27 27. Ms. Prill testified that the examination took approximately three months, with  
28 two days on-site at Summit's office on December 9 and 10, 2008, and then follow-up  
29 correspondence attempting to obtain outstanding information. Ms. Prill was not  
30



1 required to and did not provide Summit with advance notice prior to the examination  
2 that the Department's examiners would be appearing.

3 28. According to Ms. Prill, it is not unusual for a licensee to need additional time to  
4 gather documentation and information that the Department requests with respect to an  
5 examination when no prior notice is given. Ms. Prill was the Examiner in Charge of the  
6 examination and reviewed the findings by the other two examiners who accompanied  
7 her.

8 29. According to Ms. Prill, the Report of Examination ("Exam Report") that she  
9 prepared, based on the Department's findings from the examination, is an accurate  
10 reflection of Summit's violations. *State's Exhibit 1.*

11 30. The Exam Report, which is incorporated herein by this reference, provides a  
12 detailed summary of violations of statutes and rules by Summit, including but not  
13 limited to a shortage in escrow trust funds, inability to pay debts as they become due,  
14 knowing misrepresentations to the Superintendent of the Department, failing to inform  
15 the Department of Summit's debts, failure to provide an annual CPA-prepared audit  
16 report, failure to follow up on stale-dated checks, failure to provide proper  
17 documentation regarding trust account reconciliation adjustment items, failure to  
18 review reconcilements, unclear language in an escrow rate filing, failure to provide  
19 proper disclosure of availability of a closing protection letter to buyers and sellers,  
20 unfiled rates, missing documents, and failure to maintain an internal control structure.  
21 *State's Exhibit 1.*

22 31. According to State's Exhibit 17, as of October 31, 2008, Summit's Bank of  
23 America trust account ending in 8643 was short \$3,430.10, indicating there was not  
24 enough money in Summit's trust bank account to cover its trust liabilities. However, in  
25 Exhibit 1, the Department found a shortage of \$3,490.10 as of October 31, 2008.  
26 Regardless of the discrepancy as to the amount of the shortage, for purposes of the  
27 instant hearing, what is significant is that a shortage of the trust account existed as of  
28 October 31, 2008.

29 32. Summit later forwarded Ms. Prill a deposit slip and, even later, a Bank of  
30 America Counter Credit online print-out indicating the trust shortage had been

1 replenished on December 15, 2008. *State's Exhibit 17, Respondents' Exhibit B.*

2 Summit asserted that the documentation presented established that the trust account  
3 shortage has been resolved. However, Ms. Prill testified that the deposit slip does not  
4 constitute adequate proof that the trust account had been replenished because  
5 Summit provided no further reconciliations or bank statements showing the money had  
6 not been withdrawn. Despite Ms. Prill's requests for further documentation, Summit  
7 failed to provide the documentation requested by the Department to conclusively  
8 establish that the trust shortage issue had been resolved.

9 33. The Bank Reconciliation page in State's Exhibit 17 shows that the trust account  
10 shortage was the result of analysis fees being charged to the account by the bank.

11 34. Even though Summit asserted that the fees were charged in error, Ms. Prill was  
12 unaware of whether the analysis fees were still being charged to Summit's trust  
13 account ending in 8643, as the Department had not received further bank statements  
14 or reconciliations.

15 35. Ms. Prill testified that escrow agents have a fiduciary duty to be accountable for  
16 consumer funds.

#### 17 Audited Financial Report

18 36. Licensed escrow agents are required to submit semiannual financial  
19 statements as well as audited financial statements to the Department once yearly, one  
20 hundred twenty days after the company's fiscal year-end, pursuant to statute. The  
21 semiannual statements are prepared by the escrow agent, but the audited financial  
22 statement must be prepared by a CPA.

23 37. Summit's fiscal year-end is the end of September; therefore, its audited financial  
24 statements are due at the end of January each year. *State's Exhibit 1.*

25 38. Ms. Prill testified that as of the date of the administrative hearing on January 22,  
26 2010, the Department had not received Summit's audited financial report for the fiscal  
27 year-ending September 30, 2008, which was due at the end of January 2009.

28 39. Ms. D'Anna admitted in her closing argument that the financial report for  
29 Summit's fiscal year that ended on September 30, 2008 was never submitted to the  
30 Department.

1 40. Ms. Prill discussed the status of Summit's CPA-audited financial report with Ms.  
2 D'Anna several times, by telephone and e-mail. Ms. Prill was led to believe that Mr.  
3 Fink was working on the report, but that a number of events prevented its completion.  
4 *State's Exhibit 8*. Specifically, Ms. D'Anna referred to the audit report's progress in e-  
5 mails to Ms. Prill on December 11 and 16, 2008. *State's Exhibit 8*. Additionally, in her  
6 March 13, 2009 letter to Ms. Prill, Ms. D'Anna referenced the "escrow audit" as what  
7 she and her CPA were "in the process of trying to get to you." *State's Exhibit 13*.

8 41. On January 16, 2009, Ms. Prill learned from Mr. Fink that he had not worked on  
9 and could not prepare Summit's audited financial report, despite Ms. D'Anna's  
10 representations. *State's Exhibit 3*.

11 Coverage for Ms. D'Anna during her Leave of Absence

12 42. Ms. Prill testified that, during the examination, Ms. D'Anna was asked if anyone  
13 would be assuming Ms. D'Anna's duties and responsibilities while she was away on  
14 maternity leave. Ms. D'Anna informed the Department's examiners that she would be  
15 having an employee from First American oversee operations.

16 43. Based on documentation submitted by Summit in anticipation of these  
17 proceedings, it appeared Ms. D'Anna attempted to hire an escrow agent from First  
18 American in October of 2008. *Respondents' Exhibit T*. However, when that did not  
19 occur, Ms. D'Anna arranged for Ms. Partain, a friend of Ms. D'Anna, to assume her  
20 role while she went on maternity leave. Ms. Prill spoke with someone at Summit by the  
21 name of Ms. Partain, both telephonically and in-person. Ms. Partain informed Ms. Prill  
22 that she was not employed by First American, but was a friend of Ms. D'Anna's and  
23 had been employed by Summit for a few days.

24 Request for Documents

25 44. The on-site examination of Summit took approximately two days at Summit's  
26 office on December 9 and 10, 2008. Ms. Prill testified that the entirety of the  
27 examination took much longer, approximately three months, because of the  
28 Department's inability to obtain records and information from Summit.

29 45. On December 16, 2008, the Department sent Summit a letter requesting, among  
30 other things, a current list of all unpaid invoices for obligations, a copy of the bank

1 receipt showing that the escrow trust account was replenished, and a preliminary audit  
2 report prepared by Summit's CPA. *State's Exhibit 9*. The Department requested all  
3 items be produced by December 22, 2008. *Id.*

4 46. On December 19, 2008, Ms. D'Anna e-mailed Ms. Prill to request an extension  
5 of the time in which Summit had to produce the requested records. *State's Exhibit 9;*  
6 *Respondents' Exhibit B*. Ms. Prill testified that she was out of the office at the time the  
7 request was made; however, she e-mailed Ms. D'Anna on January 5, 2009, to inquire  
8 as to the status of the items requested December 16, 2008. *State's Exhibit 9*.

9 Because the Department received no response from Summit, the December 16, 2008  
10 letter was re-sent to Summit and Ms. D'Anna on January 20, 2009, requesting the  
11 same items by February 6, 2009. *State's Exhibit 9*.

12 47. Ms. Prill testified that Ms. D'Anna did not receive an explicit grant of extension  
13 as requested in her December 19, 2008 e-mail. However, Ms. Prill testified that, by  
14 default, Ms. D'Anna had additional time to produce the records. Because the  
15 Department received no response from Summit by the February 6, 2009 deadline, on  
16 February 12, 2009, a *Subpoena Duces Tecum* was issued to Summit and Ms. D'Anna.  
17 *State's Exhibit 10*.

18 48. The subpoena requested, among other things, a current list of Summit's unpaid  
19 obligations, copies of any filed pleadings in any pending court action involving Summit,  
20 copies of any bank statements evidencing Summit's interest-bearing trust account was  
21 no longer being charged a service fee and the audited financial statement for the year  
22 ending September 30, 2008. *Id.* Summit was required to produce the documentation  
23 by February 20, 2009. *Id.*

24 49. Ms. Prill testified that Ms. D'Anna was granted an extension until February 23,  
25 2009 to produce the subpoenaed items, as evidenced by e-mail correspondence  
26 between Ms. Prill and Ms. D'Anna on February 20, 2009. *Respondents' Exhibit B*.

27 50. The Department received a response from Summit dated February 23, 2009.  
28 *State's Exhibit 11*. The February 23, 2009 response failed to disclose Summit's  
29 business credit card debt and Summit's and Ms. D'Anna's debts to the Freids, which  
30

1 were known to Ms. D'Anna at the time of submission of the response. Ms. Prill further  
2 testified that Summit's February 23, 2009 response to the Department was incomplete.

3 51. On February 25, 2009, the Department contacted Summit and asked for the  
4 information that had been previously requested from Summit. *State's Exhibit 12*. The  
5 documentation was due on March 13, 2009. *Id.*

6 52. The Department received a second response from Summit, dated March 13,  
7 2009. *State's Exhibit 13*. The second response failed to disclose Summit's business  
8 credit card debt, the debt to the Freids, and the Bank of America litigation and  
9 judgment against Summit. The audit report and the bank statements requested were  
10 not provided by Summit. Ms. Prill testified that the second response from Summit was  
11 incomplete.

#### 12 Renewal Application

13 53. On September 30, 2009, the Department received Summit's annual Escrow  
14 Agent License Renewal Application for the license renewal period of October 1, 2009  
15 through September 30, 2010. *State's Exhibit 14*. Page four of six of the application,  
16 question number 9 asks whether the licensee has (a) been sued in a civil action within  
17 the last fifteen years or (b) had a final judgment issued against it. *Id.* Summit checked  
18 the box marked "no" for each item. *Id.*

19 54. Page six of six of the license renewal application contains an Affidavit section,  
20 signed by Ms. D'Anna as President, who attested to the accuracy of the information  
21 contained in the application and that such information was truthful. *State's Exhibit 14*.

22 55. The renewal application was submitted to the Department after the judgment in  
23 favor of Bank of America was issued against Summit. *Id.* By failing to disclose the  
24 civil action and judgment, Summit misrepresented information to the Department.  
25 Respondents presented no evidence to contradict the Department's allegation of  
26 misrepresentation on the renewal application regarding the civil action and judgment.

#### 27 Internal Control Issues

28 56. Ms. Prill testified that internal controls constitute a company's internal  
29 procedures and guidelines to insure against fraud and dishonesty within the company.  
30

1 57. Ms. Prill testified that a "stale-dated check" is a check held in the escrow  
2 account over one hundred eighty days that is made out to a consumer. She stated  
3 escrow agents are required to follow up with the owners of the funds to attempt to  
4 provide them with their monies, and there should be some kind of documentation  
5 showing what follow-up work has been done. Ms. Prill testified the Department views  
6 this issue as a matter of internal control policies.

7 58. The Department found Summit had two outstanding stale-dated checks during  
8 the examination where there was no evidence of adequate follow-up. *State's Exhibit*  
9 *16*. Summit's list of outstanding checks showed two checks dated January 4, 2008,  
10 and April 9, 2008, amounting to \$4.75. *State's Exhibit 16*. The Department's Trust  
11 Bank Account Reconciliation Worksheet filled out when the Department reconciled  
12 the account also listed two outstanding items. *State's Exhibit 17*. Respondents  
13 presented no evidence to the contrary.

14 59. Ms. Prill testified that a trust account reconciliation adjusting item can be a  
15 posting error or company error and that the escrow agent should research the items to  
16 discover the cause. During the examination, the Department discovered that Summit  
17 had an adjusting item totaling \$60.00 but had no back-up documentation to evidence  
18 the cause for the item or how it would be resolved. *State's Exhibit 17*. Respondents  
19 presented no evidence to the contrary.

20 60. Ms. Prill also testified that *State's Exhibit 18* is a bank statement for one of  
21 Summit's interest-bearing accounts at Bank of America ending in 3739 that the  
22 Department reconciled during the examination. The statement shows the account was  
23 being charged a monthly service fee of \$15.00. *Id.* Because Summit was holding the  
24 funds in the account for the benefit of a customer, and the monies did not belong to  
25 Summit, Ms. Prill testified the service fees should not have been charged to the  
26 account. Ms. Prill testified that, to her knowledge, the funds were eventually  
27 replenished and the service charges stopped.

28 61. Summit submitted an online summary for Business Savings account 3739 at  
29 Bank of America as of December 17, 2008, which indicated the monthly service  
30

1 charged to this account on November 28, 2008, was refunded on December 16, 2008.

2 *Respondents' Exhibit B.*

3 62. Ms. Prill acknowledged that Respondents presented to the Department  
4 documents that indicate that Bank of America was working with Summit to resolve the  
5 analysis fee issues. However, Ms. Prill opined that there were no documents  
6 presented to her to indicate that the issue had been finally resolved or that funds had  
7 been deposited into the escrow trust account.

8 63. According to Ms. Prill, it was not clear from the documents presented to the  
9 Department showing communication between Summit and Bank of America whether  
10 they are in reference to Summit's escrow trust account ending in 8643 or the interest  
11 bearing trust account ending in 3739, both of which had been charged monthly service  
12 fees.

13 64. Ms. Prill testified that escrow agents are required to reconcile all bank accounts  
14 holding fiduciary funds. Department examiners review the reconciliations to see  
15 whether there are sufficient funds in the accounts to meet the escrow liabilities.

16 65. The Department found during the examination that the End of Month  
17 Conditional Trial Balance for the Bank of America escrow trust account ending in 8643  
18 showed a balance of \$471,649.61. *State's Exhibit 15.* The ending balance for that  
19 account on the End of Month Conditional Trial Balance did not equal the amount  
20 actually in the account, as shown on the bank statement and Trust Bank Account  
21 Reconciliation in *State's Exhibit 17*, which was \$374,889.61.

22 66. Regarding Summit's Bank Reconciliation for the Bank of America escrow trust  
23 account ending in 8643, Ms. Prill testified that First American performed the actual  
24 reconciliation. She found during the examination that Summit's employees had not  
25 reviewed the reconciliation, according to the blank line at the bottom of the page on  
26 which the reviewer was to sign. *State's Exhibit 17.* Ms. Prill testified that Summit's  
27 review of the reconciliations is another issue regarding Summit's internal control  
28 procedures because without proper review of the reconciliations, Summit has no  
29 knowledge of the events occurring within the company.

1 67. According to Ms. Prill, during an examination, the Department also reviews an  
2 escrow agent's escrow rate schedule as filed with the Department. The Department  
3 conducts such a review to ensure that the rates on file with the Department are the  
4 rates being charged to consumers.

5 68. Ms. Prill testified that the examiners found the language on Summit's Schedule  
6 of Escrow Fees on page eight, section "O," number "1" to be unclear, because they  
7 were unable to determine whether the "Resale Escrow" charge as listed was a flat rate  
8 per escrow or whether the charge could be doubled in the case of two liens. *State's*  
9 *Exhibit 19.*

10 69. Ms. Prill explained that the examiners cross-checked Summit's Schedule of  
11 Escrow Fees with the HUD-1 Settlement Statements in Summit's escrow files and  
12 found a number of discrepancies between the filed rates and what Summit was  
13 actually charging its customers. Referring to her Exam Report, Ms. Prill testified that  
14 there was no documentation found in nine escrow files to support a number of the  
15 charges, including courier fees, wire fees, additional checks and overnight deliveries.  
16 *State's Exhibit 1.*

17 70. Ms. Prill stated that Ms. D'Anna later provided documentation to support the  
18 courier fees charged to customers. The total deviation from the filed rates amounted  
19 to \$300.00. *State's Exhibit 1.*

20 71. Ms. Prill testified that Arizona Revised Statute § 6-846.04 provides for the  
21 imposition of a penalty against escrow agents for the total amount of rate deviations  
22 found by the Department. Excluding the courier fees, the deviation amounts to  
23 \$120.00. *State's Exhibit 1.*

24 72. During their review of the escrow files, Ms. Prill testified the Department's  
25 examiners also discovered a HUD-1 Settlement Statement listing an "additional  
26 escrow" fee of \$150.00 in escrow file number 502-5034938. *State's Exhibit 25.* She  
27 explained this was written up in the Report of Examination as Summit having charged  
28 a consumer an unfiled escrow rate, because nothing in Summit's Schedule of Escrow  
29 Fees was characterized as an "additional escrow" fee. *State's Exhibits 1, 19.*



1 Summit's Schedule of Escrow Fees lists on page six an "additional work charge fee."  
2 *State's Exhibit 19.*

3 73. When questioned regarding the difference, in Ms. Prill's opinion, between  
4 "additional escrow" fees and "additional work charge" fees, Ms. Prill stated that there  
5 was no back-up documentation to show additional work having been done on the file,  
6 and the examiners were unsure what constituted the "additional escrow" fee.

7 74. Ms. Prill testified that the difference between an unfiled rate and a rate deviation  
8 is that no penalty is assessed against the escrow agent for the unfiled rate, as it is for  
9 the rate deviations. Ms. Prill's testimony indicated the Department gave Summit the  
10 benefit of the doubt regarding the rate filing and the violation found was one for which  
11 Summit would not incur an additional rate deviation penalty.

12 75. Ms. Prill testified that a Right to Earn Interest disclosure must be provided to  
13 consumers within three business days after the escrow agent receives funds. See  
14 A.R.S. § 6-834(D). The disclosure informs the consumers of their right to earn interest  
15 on all monies deposited into the escrow. *State's Exhibit 28.* When the Department's  
16 examiners reviewed Summit's escrow files during the examination, one of the things  
17 they looked for is evidence of whether the Notice of Right to Earn Interest is provided  
18 to consumers within three business days of the deposit of funds, pursuant to statute.  
19 Ms. Prill testified that two of Summit's escrow files failed to contain the required  
20 disclosure.

21 76. According to Ms. Prill, escrow agents must provide a closing protection letter  
22 disclosure to consumers, informing consumers they can request the actual closing  
23 protection letter from the title insurer. Ms. Prill testified that, although the letter comes  
24 from the title insurer, the escrow agent is statutorily liable for not advising the  
25 consumers that the closing protection letter can be requested.

26 77. The Department's examiners specifically searched escrow files for evidence the  
27 closing protection letter disclosure was provided to consumers. Ms. Prill testified that  
28 not all of Summit's escrow files contained the closing protection letter disclosure  
29 language. Ms. Prill testified that the closing protection letter was missing from more  
30 than one escrow file. Ms. Prill stated that the addendum Summit submitted in

1 anticipation of this proceeding to show that future closing protection letter disclosures  
2 are received by the consumers was satisfactory for Summit's use. *Respondents'*  
3 *Exhibit L.*

4 78. Ms. Prill testified that escrow agents are required within three business days of  
5 receipt of the funds to notify consumers that their monies are not insured against loss  
6 pursuant to A.R.S. § 6-841.03. The Department's examiners reviewed Summit's  
7 escrow files and specifically searched for evidence that the notice regarding uninsured  
8 monies was provided to consumers.

9 79. Ms. Prill stated that Summit's Receipt for Deposit contains the necessary  
10 language regarding the uninsured funds; however there was no evidence in a number  
11 of Summit's files to support that the language was provided to consumers within the  
12 statutory three-day time frame. *State's Exhibit 30.* Ms. Prill testified that there were a  
13 handful of additional files missing disclosure language. She further testified that she  
14 did not recall seeing a copy of any revised form where consumers would sign and date  
15 Summit's Receipt for Deposit upon their receipt of the uninsured monies notice.

16 80. Ms. Prill testified that escrow fee calculation worksheets are utilized by escrow  
17 agents to show how they arrived at the dollar amounts shown as being charged to the  
18 consumers on the HUD-1 Settlement Statements, and that the Department considers  
19 the worksheets to be another internal control matter. Ms. Prill stated that all items  
20 charged are listed, but what makes the document a worksheet is that it shows what  
21 specific amounts were charged to the buyer and the seller and for what purpose, along  
22 with the calculations as to how the numbers were obtained.

23 81. Ms. Prill testified that it is the Department's position that A.R.S. §§ 6-841(B), 6-  
24 831 and A.A.C. R20-4-702 regulate escrow agents' internal control procedures and  
25 record-keeping requirements. The examiners also specifically reviewed Summit's  
26 escrow files to see if escrow fee calculation worksheets were being kept. Ms. Prill  
27 testified that she believed none of Summit's escrow files contained escrow fee  
28 calculation worksheets.

29 82. Ms. Prill testified that Summit's Exhibits Q and R; sheets titled "Escrow/Title  
30 Fees" for escrow file numbers 5040365 and 5040324, did not constitute fee calculation

worksheets because they merely listed dollar amounts and did not show how Summit arrived at those amounts. Ms. Prill testified that, since the examination, Summit has provided an adequate fee calculation worksheet template. *Respondents' Exhibit O*.

83. Ms. Prill testified that "Good Funds Law" is a concept that defines when funds become available for disbursement after deposit in the escrow account. She stated that an escrow agent may only disburse monies from an escrow account if deposited funds are available, pursuant to A.R.S. § 6-843(B). Ms. Prill testified there is a chart to inform escrow agents when different types of funds become available for disbursement. The chart is made available to licensees, but Ms. Prill did not believe the chart was actually prepared by the Department.

84. In the instance of the Compass Bank check issued on February 27, 2008, in the amount of \$250,388.41 in State's Exhibit 24, because the issuing institution is based in Birmingham, Alabama, the check is considered an out-of-state check, and, according to Ms. Prill, the funds do not become available until four or five days after the deposit is made.

85. Ms. Prill's review of the File Balance Sheet for Summit's escrow file number 502-5008723 established that the check in question was deposited by Summit on February 27, 2008, and funds from that deposit were disbursed as soon as February 29, 2008, by Summit. *State's Exhibit 24*. Ms. Prill testified that the disbursement was made at least two days before the funds were actually available for disbursement. *Id.*

86. Similarly, there is a one-day period before which funds from official checks become available, according to Ms. Prill. In escrow file number 502-5034938, Summit deposited an official check drawn on Chase Bank on May 6, 2008. *State's Exhibit 25*. According to Ms. Prill, the monies would have been available for disbursement on May 7, 2008. However, Summit's File Balance Sheet reflects that the funds were disbursed from the account on the same date the monies were deposited. *Id.*

87. Ms. Prill also testified that A.R.S. § 6-817(A)(14) requires escrow agents to authorize all financial institutions where the licensees have trust or fiduciary accounts to notify the Superintendent of instances of insufficient funds or overdrafts. Ms. Prill testified that Summit provided her with a copy of a letter sent by Ms. D'Anna to Bank of

1 America, authorizing the notification to the Superintendent on December 10, 2008.  
2 *State's Exhibit 31.*

3 88. Summit's escrow agent license was approved in September of 2007, and  
4 approximately thirteen months elapsed during which time the required authorization  
5 was not in place.

6 89. Ms. Prill testified that, at the conclusion of Summit's on-site examination, the  
7 Department's examiners held an exit interview with Ms. D'Anna, wherein they  
8 discussed the findings of the examination. At that time, according to Ms. Prill, based  
9 on the information provided to her, Ms. D'Anna should have had an idea of what  
10 follow-up with the Department was necessary for Summit.

11 90. In Ms. Prill's opinion, Summit did not have adequate internal controls. She  
12 arrived at that opinion based on the shortage of funds in the trust account, documents  
13 were not reviewed, and analysis fees were charged to fiduciary accounts for long  
14 periods without Summit noticing. Ms. Prill's concerns regarding the internal controls  
15 were not alleviated by Summit's statement that it has resolved the cash shortage in the  
16 trust account. *Respondents' Exhibit D.*

17 Robert Charlton

18 91. Robert Charlton ("Mr. Charlton") is the Assistant Superintendent at the  
19 Department, and has been employed by the Department since 1986. He has been an  
20 Assistant Superintendent for approximately ten years, and manages the non-  
21 depository side of the Department, which accounts for approximately fourteen different  
22 types of licenses, including escrow agents.

23 92. Mr. Charlton testified that escrow agent licenses are extremely important  
24 because they act as fiduciaries for consumer funds and the potential for harm to the  
25 public is great.

26 93. Mr. Charlton ordered the examination of Summit after receiving a telephone call  
27 from an employee of Summit who indicated he was not being paid. He testified that,  
28 while the Department does not normally get involved in labor disputes, he did ask for  
29 information regarding Summit's general inability to pay debts and regular business  
30

1 expenses. Mr. Charlton stated that when he receives such information, he normally  
2 orders an examination by the Department.

3 94. According to Mr. Charlton, the main areas of concern to the Department were  
4 that: a) Summit's financial condition was such that it could not pay debts as they  
5 accrued in the normal course of business and that Summit appeared to be insolvent; b)  
6 the number of outstanding debts that Summit had; c) the Department has not received  
7 Summit's fiscal year ending September 2008 audit report and has no idea of what  
8 Summit's true financial situation is; d) Summit has not complied with the Department's  
9 request for documents that Summit is required to maintain; e) Summit has not complied  
10 with a Subpoena that the Department issued compelling Summit to produce certain  
11 documents; and f) the Department has not received the examination fee from Summit  
12 in the approximate amount of \$6,300.00, nor has the Department received late fees that  
13 continue to accrue and are approximately \$4,000.00.

14 95. Mr. Charlton testified that the inability to pay debts as they fall due indicates  
15 insolvency, pursuant to statute, and the evidence indicates that a number of entities  
16 are awaiting payment from Summit, including the Department.

17 96. As of the February 22, 2010 hearing date, the Department had not received  
18 Summit's CPA-audited financial report due in January 2009. Mr. Charlton testified  
19 that, while he does not remember the exact statute, late penalties may be imposed for  
20 escrow agents' failure to timely submit their annual CPA-audited financial reports.

21 97. Mr. Charlton further testified that, in his twenty three years with the Department,  
22 he can only recall approximately five times where the Department has had to issue a  
23 Subpoena to a licensee, and that it concerned him that even as of the hearing date,  
24 Summit still had not complied with the Subpoena in its entirety.

25 98. Mr. Charlton testified that the Department has not received the statutory  
26 examination fee authorized by A.R.S. § 6-125, due from Summit, which totaled  
27 approximately \$6,300.00. He added that there are also late fees associated with the  
28 failure to timely remit the examination fee.

29 99. Mr. Charlton testified that the Department is seeking a civil money penalty of  
30 \$10,000.00 and revocation of Summit's escrow agent license. He clarified that, in this

1 case, the failure to provide the Department with information and reports, Summit's  
2 solvency status and the outstanding debts are the main reasons for the revocation.  
3 100. Mr. Charlton testified that the Department has not seen that Summit has the  
4 capacity to pay its outstanding debts.

5 Evidence Presented by Respondents

6 Ivy McGalliard

7 101. Ivy McGalliard ("Ms. McGalliard") is a Senior Loss Mitigation Specialist for  
8 CitiGroup and realtor, and has been in the real estate industry for thirteen years. Ms.  
9 McGalliard has known Ms. D'Anna since 2008, and directs one hundred percent of her  
10 real estate transactions to Summit.

11 102. Ms. McGalliard considers Ms. D'Anna to be a seasoned escrow agent. Ms.  
12 McGalliard believes Ms. D'Anna to be creditworthy and knows of no issues regarding  
13 Summit's or Ms. D'Anna's abilities to pay outstanding debts. Ms. McGalliard does not  
14 believe Summit's escrow agent license should be revoked.

15 103. However, Ms. McGalliard is not an escrow agent and has never held an escrow  
16 agent license. She had no knowledge of Summit's solvency, Summit's failure to file  
17 financial statements with the Department, or of Summit's trust account shortage, and  
18 was not familiar with any of the specific allegations in the matter at hand.

19 Jeff Ferm

20 104. Jeff Ferm ("Mr. Ferm") testified that he considers himself to be a friend and  
21 mentor to Ms. D'Anna, as well as a customer and former employer. He has known Ms.  
22 D'Anna approximately four or five years. Mr. Ferm claimed to be "in lending" and  
23 works for Prospect Mortgage.

24 105. Mr. Ferm has never held an escrow agent license and has no familiarity with the  
25 rules and statutes regulating escrow agents. Mr. Ferm claimed to have some  
26 knowledge of Summit's solvency; however he did not elaborate on that knowledge.

27 106. Mr. Ferm does not believe Summit's escrow agent license should be revoked,  
28 but he has no knowledge of Summit's failure to file financial statements with the  
29 Department, or Summit's trust account shortage.  
30

1  
2 Pam Bentley

3 107. Pam Bentley ("Ms. Bentley") is a professional project manager for IBM, as well  
4 as Ms. D'Anna's friend and neighbor. She has known Ms. D'Anna for almost fourteen  
5 years. Ms. Bentley has processed approximately eight personal transactions through  
6 Summit, four of which were handled by Ms. D'Anna personally, and has been satisfied  
7 with the results. Ms. Bentley does not believe Summit's escrow agent license should  
8 be revoked.

9 108. Ms. Bentley has never held an escrow agent license and is not familiar with the  
10 statutes and rules regulating escrow agents in Arizona. Ms. Bentley testified that she  
11 has limited knowledge of Summit's solvency and filing of financial statements, but did  
12 not elaborate on that knowledge. Ms. Bentley had no knowledge of any trust account  
13 shortage.

14 CONCLUSIONS OF LAW

15 1. The Superintendent of the Department is vested with the authority to regulate  
16 persons engaged in the escrow agent business and has the duty to enforce statutes  
17 and rules relating to escrow agents. See A.R.S. § 6-801, *et seq.*

18 2. The Department bears the burden to prove by a preponderance of the evidence  
19 that Respondents have violated state laws pertaining to escrow agents. See A.A.C.  
20 R2-19-119.

21 3. A "preponderance of the evidence is such proof as convinces the trier of fact that  
22 the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF  
23 EVIDENCE, § 5 (1960). "It is evidence which is of greater weight or more convincing than  
24 the evidence which is offered in opposition to it; that is, evidence which as a whole  
25 shows that the fact sought to be proved is more probable than not." BLACK'S LAW  
26 DICTIONARY 1182 (6<sup>th</sup> ed. 1990).

27 4. The weight of the evidence of record, as set forth above, established that  
28 Respondents violated A.R.S. § 6-817(A)(14) by failing to authorize Bank of America to  
29 notify the Superintendent of any overdraft or checks returned for insufficient funds in  
30 any trust accounts from September of 2007 until December 10, 2008.

1 5. The weight of the evidence of record, as set forth above, established that  
2 Respondents violated A.R.S. § 6-843(B), by disbursing funds that were not yet  
3 available for withdrawal from the escrow account.

4 6. The weight of the evidence of record, as set forth above, established that  
5 Respondents violated A.R.S. §§ 6-841(B) and 6-831, as well as A.A.C. R20-4-702, by  
6 failing to maintain detailed escrow fee calculation worksheets in sufficient detail to  
7 document each escrow officer's calculation of escrow fees. The lists submitted by  
8 Respondents do not constitute calculation worksheets.

9 7. The weight of the evidence of record, as set forth above, established that  
10 Respondents violated A.R.S. § 6-841.03, by failing to disclose to buyers and sellers of  
11 residential dwellings not later than three business days after receipt of funds, that  
12 monies deposited in an escrow account are not insured by this State or the United  
13 States Government.

14 8. The weight of the evidence of record, as set forth above, established that  
15 Respondents violated A.R.S. § 6-841.02(A), by failing to provide adequate disclosure  
16 of the availability of a closing protection letter from the underwriter to escrow parties  
17 on residential transactions.

18 9. The weight of the evidence of record, as set forth above, established that  
19 Respondents violated A.R.S. § 6-834(D), by failing to provide a notice to escrow  
20 parties of their right to earn interest within three business days after receipt of monies  
21 deposited into escrow.

22 10. The weight of the evidence of record, as set forth above, established that  
23 Respondents violated A.R.S. §§ 6-841(A), 6-846.01(A) and (B) and A.A.C. R20-4-702,  
24 by deviating from their filed escrow rates regarding wire fees, escrow fees, and  
25 additional checks.

26 11. Based on Respondents' escrow rate deviations, the Department is authorized to  
27 impose a rate deviation penalty against Summit in the amount of the total deviation  
28 pursuant to A.R.S. §6-846.04(B). Excluding the courier fees that Respondents later  
29 substantiated, pursuant to the Department's Exam Report, grounds exist for the  
30 imposition of a penalty of \$120.00.



1 12. The weight of the evidence of record, as set forth above, established that  
2 Respondents violated A.R.S. §§ 6-841(A) and 6-831, as well as A.A.C. R20-4-702, by  
3 failing to keep and maintain at their place of business complete and accurate records.  
4 Respondents admitted they have not prepared or submitted their annual audited  
5 financial report for the fiscal year that ended in September of 2008. Furthermore,  
6 Respondents failed to present any evidence that they had provided the Department  
7 with the bank statements that were requested numerous times in both letters and a  
8 subpoena. Respondents' argument that the Department's requests were unfairly  
9 onerous is not convincing when statutes require Respondents to maintain the  
10 documents requested.

11 13. The weight of the evidence of record, as set forth above, established that  
12 Respondents violated A.R.S. §§ 6-841(A) and 6-831, as well as A.A.C. R20-4-702, by  
13 filing an escrow rate that was unclear as to whether the "Resale Escrow" charge was a  
14 flat rate, regardless of whether there was a first and second lien, or whether the rate  
15 was per lien.

16 14. The weight of the evidence of record, as set forth above, established that  
17 Respondents violated A.R.S. §§ 6-834(A), 6-834(B), 6-841(A), 6-841(B) and 6-  
18 841.01(A), as well as A.A.C. R20-4-702 and A.A.C. R20-4-704, by failing to maintain  
19 internal control procedures to ensure that Respondents do not make significant errors  
20 or perpetuate significant irregularities or fraud without timely detection by failing to  
21 account properly for escrow property. Respondents did not contest that they had  
22 failed to follow-up on stale-dated outstanding checks or trust account reconciliation  
23 adjusting items, only that the problem with the service charges to interest-bearing  
24 accounts had been remedied. Pursuant to A.R.S. § 6-817(A)(12), the Department has  
25 grounds to revoke Respondents' escrow agent license due to Respondents' failure to  
26 maintain internal control procedures.

27 15. The weight of the evidence of record, as set forth above, established that  
28 Respondents violated A.R.S. § 6-832(A), by failing to submit an annual audit report of  
29 the escrow account servicing and subdivision trust activities and the fiscal year-end  
30 financial statement as of September 2008, prepared by a certified public accountant.

1 16. Pursuant to A.R.S. § 6-816(B), grounds exist for the Department to impose a  
2 late fee of twenty five dollars per day for each day Respondents' annual CPA-audited  
3 financial report is not submitted to the Department after one hundred twenty days after  
4 Respondents' fiscal year end. Summit's fiscal year for 2008 ended September 30,  
5 2008. One hundred twenty days from that date is January 28, 2009. Three hundred  
6 fifty eight days elapsed between January 28, 2009 and January 22, 2010, which  
7 amounts to a total late penalty of \$8,950.00.

8 17. The Administrative Law Judge concludes that, while the Department clearly  
9 attempted to work with Respondents regarding deadlines and submission of records,  
10 an extension regarding the annual audit report was never specifically given. A short  
11 extension applicable to the February 12, 2009 subpoena that included the audit report  
12 was granted by the Department through February 23, 2009. This, coupled with the  
13 Department's many requests for the information, indicate that the Department did not  
14 waive the late fees associated with Respondents' failure to submit their annual audit  
15 report.

16 18. The weight of the evidence of record, as set forth above, established that  
17 Respondents violated A.R.S. §§ 6-817(A)(6), 6-837(A) and 6-124(C), as well as A.A.C.  
18 R20-4-708, by knowingly making false representations of material facts to the  
19 Superintendent, as well as suppressing and withholding from the Superintendent  
20 information that Respondents possessed. While Ms. D'Anna argued that her  
21 representations to Ms. Prill regarding the annual escrow audit were truthful because  
22 she had spoken with Mr. Fink regarding the audit, her written communications to Ms.  
23 Prill indicate the audit report was in some stage of completion and would be submitted  
24 to the Department presently. Mr. Fink testified that he performed no work on the audit  
25 report for Summit's fiscal year ending September 30, 2008, and had informed Ms.  
26 D'Anna that no work would be performed until Summit's outstanding bill was paid in  
27 full.

28 19. The evidence of record indicates Respondents intentionally provided the  
29 Department with false information and withheld information the Department requested.  
30 Furthermore, despite the Department's numerous requests for a list of Summit's

1 outstanding debts and information regarding lawsuits involving Respondents, Summit  
2 failed to inform the Department of the outstanding balance due on its business credit  
3 card, the judgment owed to Bank of America, and the promissory notes to the Freids.  
4 Respondents did not dispute this allegation. Mr. Fink even testified that he specifically  
5 informed Ms. D'Anna of the Bank of America lawsuit, and Respondents presented no  
6 evidence to the contrary on that point.

7 20. Ms. D'Anna submitted an escrow license renewal application to the Department  
8 wherein she swore the information contained therein was true and correct. The  
9 renewal application was received by the Department on September 30, 2009, months  
10 after Mr. Fink testified he had informed Ms. D'Anna of the Bank of America litigation.  
11 Summit's renewal application plainly misrepresented to the Department that it was not  
12 the subject of any lawsuit and that no judgment had been imposed against it, when  
13 Respondents knew otherwise.

14 21. The weight of the evidence of record established that Respondents violated  
15 A.R.S. § 6-124(C), by failing to provide documents to the Department, including bank  
16 statements requested as far back as December 16, 2008, and Summit's list of  
17 outstanding debts, among other things. Ms. D'Anna's apparent reliance on the theory  
18 that the Department ignored her request for an extension on December 19, 2008, is  
19 misplaced. There were a series of communications regarding that request between  
20 December 2008 and January of 2009, wherein Ms. Prill requested the status of the  
21 information requested on January 5, 2009, and received no further response from Ms.  
22 D'Anna. The extension granted by Ms. Prill on February 20, 2009, was regarding  
23 documents subpoenaed from Summit on February 12, 2009, and not for the December  
24 19, 2008 request.

25 22. The weight of the evidence of record, as set forth above, established that  
26 Respondents are unable to pay their debts as they become due, a consideration for  
27 the Superintendent of the Department pursuant to A.A.C. R20-4-708, and are in such  
28 financial condition that the business cannot continue without posing danger to the  
29 public and their service providers, all of which constitute grounds for the Department to  
30 revoke Respondents' escrow agent license pursuant to A.R.S. § 6-817(A)(1) and (3).

1 23. The Administrative Law Judge finds Ms. Freid's testimony regarding her  
2 monthly payments of Summit's corporate credit card debts credible and Respondents  
3 presented no evidence to dispute the fact that Summit is unable to pay its monthly  
4 credit card bills as they become due on a regular basis. Summit's later reimbursement  
5 of portions of Ms. Freid's expenditures does not negate the fact that Summit fails to  
6 pay a company debt.

7 24. Mr. Bartlett's testimony regarding Summit's outstanding debt of nearly  
8 \$30,000.00 was also persuasive. Respondents' argument that they contacted both Mr.  
9 Bartlett and Mr. Fink to reiterate their intent to pay the outstanding balances does not  
10 resolve the fact that the monies are still due and have been outstanding for at least a  
11 year.

12 25. The weight of the evidence of record, as set forth above, established that  
13 Respondents do not have the financial resources, character, or competence to warrant  
14 the belief that the business will be operated lawfully, honestly, fairly, and efficiently  
15 pursuant to Title 6, Chapter 7, which constitutes grounds for the Department to revoke  
16 Respondents' escrow agent license pursuant to A.R.S. § 6-817(A)(10). Respondents  
17 failed to submit their annual financial escrow audit to the Department, and presented  
18 no evidence during the administrative hearing to demonstrate their solvency.

19 26. Ms. D'Anna's misrepresentations to the Department regarding Summit's debts,  
20 the status of Summit's audit report, and the Bank of America lawsuit does not reflect  
21 positively on Ms. D'Anna's character and calls into question her competence to  
22 manage an escrow agency. Furthermore, Summit's failure to implement internal  
23 control procedures, trust account shortage, and enormous debt load also reflect poorly  
24 on Ms. D'Anna's competence.

25 27. The character reference letters submitted by Respondents were given little  
26 weight, as the authors were not available for cross-examination and could not be  
27 observed or questioned by the Administrative Law Judge. A number of the letters  
28 were over a year old, and none of them referenced any type of knowledge about  
29 Summit's financial status or compliance with applicable statutes and rules. Similarly,  
30

1 Ms. D'Anna's character witnesses, who appeared on her behalf, knew little about  
2 either the specific allegations in the matter at hand or Summit's financial position.

3 28. Pursuant to A.R.S § 6-125(B)(4), Respondents were assessed an examination  
4 fee of \$6,337.50, which Respondents were required to remit to the Department within  
5 thirty days of the date the assessment was mailed by the Department pursuant to  
6 A.R.S § 6-125(D). The invoice for the examination fee was issued to Respondents  
7 with the Notice of Hearing to Revoke and Complaint on October 7, 2009. At the time  
8 of the administrative hearing, Respondents had not remitted payment. Pursuant to  
9 A.R.S § 6-125(D), a penalty of \$50.00 per day shall be assessed for each of the  
10 seventy four days between November 9, 2009 and January 22, 2010, that  
11 Respondents failed to pay the examination fee, which amounts to a total penalty of  
12 \$3,700.00.

13 29. Pursuant to A.R.S. § 6-132, the Department is authorized to impose a civil  
14 penalty of up to \$5,000.00 per day for each violation against "any person, including  
15 any officer, director, employee, agent or other person" for violations of A.R.S., Title 6.  
16 Based upon the above-mentioned violations, some of which were done knowingly,  
17 grounds exist for the Department to impose a civil money penalty in the amount of  
18 \$10,000.00 against Summit and Ms. D'Anna. Ms. D'Anna, as the main employee and  
19 owner, was responsible for the statutory violations committed by Summit, and she,  
20 personally, made misrepresentations to the Department and failed to have Summit  
21 respond to the Subpoena that was issued and requests for documents that were made  
22 in conjunction with the above-mentioned examination.

23 30. Based upon the above, grounds exist for the revocation of Summit's escrow  
24 agent license pursuant to A.R.S. § 6-817(A)(1), (2), (3), (6), (10) and (12).

25 **ORDER**

26 Based on the above, on the effective date of the Order entered in this matter  
27 Summit's escrow agent license shall be revoked. Additionally, within 45 days of the  
28 effective date of the Order entered in this matter, Summit and Ms. D'Anna are jointly  
29 and severally responsible to pay to the Department the sum of \$6,337.50 for the  
30 examination fee plus a penalty of \$3,700.00 for having failed to pay the examination fee

1 for the period of November 9, 2009 through January 22, 2010 (74 days x \$50.00 per  
2 day), and a civil penalty of \$10,000.00 for the above-found violations, some of which  
3 were knowingly made.

4  
5 Done this day, May 20, 2010.

6  
7 /s/ Lewis D. Kowal  
8 Administrative Law Judge  
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11 Transmitted electronically to:

12  
13 Thomas L. Wood,  
14 Arizona Department of Financial Institutions  
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